Hollinger Corp.
pH 8.5

In the Matter of the Application

OF

JACOB A. CONOVER,

FOR

AN EXTENSION

OF HIS

LETTERS PATENT

FOR ~~IMPROVEMENTS IN~~ A

WOOD SPLITTING MACHINES,

15

Dated May 15, 1855.

NEW YORK
National Printing Company, 25 Chambers Street.
1876.

In the matter of the application of JACOB A. CONOVER, for an extension of Letters Patent, for a machine for splitting wood, dated and issued, May 15th, 1855, and re-issued July 13th, 1875.

State, City and County of New York, ss.:

The petitioner, Jacob A. Conover, being duly sworn, says that he has re-examined his evidence given on his original application for an extension of said letters patent, which evidence is now on file in the Patent Office of the United States, and that the following is a true copy of his direct evidence, and is true.

"My name is Jacob A. Conover. I am the appli-
"cant in this matter. I am 53 years of age, and 3
"reside at 803 Greenwich street, New York City. I
"have examined the press copy account marked
"Exhibit A; M. B. Andrus, Notary, &c., and it con-
"tains all the moneys received on account of the
"patent which I have any record of, and which I
"think contains the whole I have received. It also
"contains all the moneys spent or paid out on
"account of the patent which I have any record of.
"Some of these expenses are estimated, and very
"small sums paid out are not included in this state- 4
"ment; there was no record made of them which I
"can find. I found, when I first commenced intro-
"ducing the products of my machine, that the public
"were very much prejudiced against buying wood in
"that shape; and I had to employ persons to solicit
"custom for the sale of the products. I did not suc-

"ceed very well until after I had exhibited one of my
5 "machines in the fall of 1855, at the Fair of the
"American Institute, held at the Crystal Palace. I
"advertised in newspapers and got up circulars,
"both the products and the sale of rights to use the
"machine. As soon as the sale of the products of
"the machine became a success, I found opposition
"by parties infringing, and soon it became to such
"an extent, that I had to commence suits against
"them. The first suit, I think, was commenced in
"March, 1856; and I have been almost constantly
6 "up to the present time involved in law suits under
"this patent for infringements of it. I know com-
"bination of parties infringing the patent to contest
"the suits. When I first commenced to furnish
"kindling-wood, cut and split, there were no parties
"to my knowledge, that made it a business. Pre
"vious to that time, wood was sold in this city to
"consumers in cord-wood stick, by the cart-load; and
"in all cases where the consumers had the wood
"sawed and split, it was done at their doors or in the
7 "cellar. Previous to that, also, there were large
"quantities of charcoal used for kindling purposes;
"and amongst the poorer classes charcoal was used
"for cooking purposes in hot weather. Since the
"introduction of kindling-wood it has in a great meas-
"ure superseded the use of charcoal for kindling pur-
"poses, and by the poorer classes, for cooking purposes.
"Previously, charcoal was kept by the grocers for
"sale, and peddled along the streets by charcoal ped-
"dlers. In the place of which, now, kindling-wood
8 "is kept by the grocers and peddled along the
"streets. I have estimated the value of this inven-
"tion at ten thousand dollars per annum. I made
"my estimate and calculations from the proceeds and
"value that I have ascertained since the decision
"rendered in my favor of Judge Shipman."

And deponent further says, that the detailed state-

ment of receipts and disbursements, appended to his said original application and evidence, was truly and 9
correctly set forth therein, and that his net receipts from said invention, for the first term of 14 years, was only $8,662.55, as fully appeared by said statement.

And deponent further says that the detailed statement, hereto annexed, is a just, true and correct account of his receipts from said patent, and expenditures and value of his services in and about the same as near as he is able to give the same, and that his actual net income from the same, from the time of 10
said extension up to this date, does not exceed the sum of $15,017.93.

And deponent further says that as soon as his invention began to be successful a variety of other machines were introduced embracing the substantial features of said invention, and the number of such machines continued to increase until deponent was not only prevented from increasing the revenue from his invention, but was obliged to compromise with most of his licensees, and take a less sum than origin- 11
ally agreed upon.

And deponent further says that he has been obliged to commence over [illegible] actions against infringers, and although he has thus far succeeded in every case where a final hearing has been had, he has not been able to recover any considerable amount, except in the actions against John H. Rapp and Dohrmann & Peipho, all of which is included in his statement of receipts on his former application for extension; the decree against Henry Mevs, for $2,500.08 is now in the 12
Supreme Court on appeal, involving only the question of the amount, and the decree against Kohn & Kemmelstiel for $5,663.53 remains unpaid, and the collection of the full amount doubtful.

And deponent further says, that upon the trial of the several actions referred to in his affidavit in his

action against D. A. Greene, hereto annexed, and
13 shortly after the extension, it was discovered that the claims in his letters patent did not cover all his invention, and that several important features had been omitted by inadvertence or mistake; and deponent consulted his counsel with the view of having the same immediately amended and re-issued. That at the time of such discovery he had actions pending against Henry Mevs, and Joseph Kohn, and Samuel Kemmelstiel, in both of which he had expended large sums, and in both of which he was
14 advised and had every reason to believe he would recover a large amount of money, a portion of which would be for the use of machines during the original term of his patent, in which his brother and former copartner, D. B. Conover, was interested with him, and which actions were expected to be speedily terminated. And he was advised by his counsel that if he surrendered his original patent and re-issued the said patent before final judgment in said actions, he would lose not only all the money he had expended
15 therein, but the several sums which he was entitled to recover.

And deponent further says that the parties to said actions resorted to every possible device to protract and delay said actions, so that a final decree in the last of said actions was not entered until the 3d day of March, 1875. And his application for the amendment and re-issue was presented as soon thereafter as the same could be prepared.

And deponent further says that although he soon
16 learned from actual experience in the use of his invention, that there was a great saving of labor thereby, and that its use would result in furnishing to the public better, more convenient, and cheaper kindling materials than had previously been supplied, he placed the license fee for the use of each machine at one dollar per day for each day on which it was

used, and offered it to all persons who desired to go into the business, at that low rate. 17

And deponent further says, that as soon as his said invention became a success, various devices were resorted to to deprive him of his just rights, and as fast as he recovered against or enjoined one machine, another would be produced. That a large number of infringers sprung up and organized a combination of wood dealers to defend each other, and deponent was obliged to combat such combination alone, and expend a large amount of money and time in prosecutions, and he verily believes that during the entire period of his extension, ninety-hundredths of the kindling-wood used in the Cities of New York, Brooklyn, and Jersey City, was split by machines embracing one or more of the material and essential features of his invention, and there are now in use in said three cities alone at least 75 of such machines, for which deponent does not and has not received any compensation whatever; but on the contrary, nearly all the owners thereof, as he is informed and believes, are acting in concert with the combinations hereinbefore referred to against him. 18 19

And deponent further says, that about the time of the extension of his said patent by the Commissioner of Patents, a number of the persons holding license from him in the City of New York, held a meeting, and on consultation together offered deponent $20,000 for his rights under said extension for the City of New York; that deponent believing the same to be worth more, declined to accept such offer, but finally offered to take $25,000 therefor, and failing to agree upon the terms, the matter was dropped. 20

JACOB A. CONOVER.

Sworn to before me, this 1st day of February, 1876.

J. Cooper Lane,
Notary Public, N. Y. Co.

Collected the following amounts from licencees
21 and others, mostly in monthly payments, between May 15th, 1869, and January 25th, 1876.

Charles J. Sparks,	for use of one	machine,		$113 00
Jonas Sparks,	"	"	"	50 00
Henry Weaver,	"	"	"	60 00
Thomas Harrison,	"	"	"	189 00
N. B. Cottrell,	"	"	"	1,111 70
Mollman & Wehage,	"	"	"	840 00
Rengerman & Wehage,		"	"	552 00
Kauth, Helderbrandt & Co.,		"	"	969 00
22 Kauth & Veshlege Bros,		"	"	210 00
Hinken & Gereshen,	"	"	"	266 00
Finken & Son,	"	"	"	1,083 00
Dohrmann & Piepo,	"	"	"	1,374 00
R. Martin & Son,	"	"	"	196 00
F. H. Lammers,	"	"	"	939 00
Geo. Sirmer,	"	"	"	771 50
Schultz & Humken,	"	"	"	1,362 00
Andrew A. Waters,	"	"	"	685 00
James Jones,	"	"	"	637 50
23 Nicholas Joost,	"	"	"	834 50
E. M. Clark & Co.,	"	"	"	45 00
Clark & Wilkins,	"	"	"	830 00
(Now two, and infringing.)				
Jacob Edler,	for use of one		"	232 00
Seth C. Williams,	"	"	"	237 00
H. A. Schmok,	"	"	"	35 00
Julius C. Leihman,	"	"	"	38 00
Patrick H. Duffy & Sons,	"		"	934 00
Tooker & Irwin for use of one, and				
24 compromises for the use of three, infringing				837 00
John H. Heisman for use of two now three machines				2,090 00
Walter Palmer, for use of two machines				1,735 00
C. W. Alcott & Co., for use of three now six machines				3,750 00

Dicks & Son, for use of one machine..	$341 00	
Ryan & McGlin, " " " "	160 00	25
Frederick Buse, " " " now two...	1,109 00	
Wm. Muler & Father, for use of one...	225 00	
Earl Bros., for use of one machine	100 00	
Philip Lang, " " " "	15 00	
Charles Brandt, for use of same.....	50 00	
Isaac Dahman, " " " one.....	10 00	
Vogel & Erbers, " " " same.....	25 00	
Henry Mehley, " " " "	33 50	
John Hummel & Co. for use of same..	40 00	
Edgar Lay, for use of one machine...	35 00	26
John S. Gilmore, " " "	215 00	
Henry Draught, " " "	175 00	
Thomas L. Peck, compromise for three, infringing.....	210 00	
Luther Bros., compromise for one machine.....	86 32	
A. J. DeBaun, Brooklyn, for use of one machine.....	500 00	
Henry Waterman, for use of one Machine.....	147 00	27
Frith Brothers, compromise for infringing machines	200 00	
Robert Keeler, compromise for infringing machine.....	75 00	
Jersey City and Hoboken.		
John Kamenia, compromise for infringing machine.....	175 00	
Robert Donsha,.....	1,000 00	
Herman Farendroff, for use of one machine	334 00	28
Ingleson & Davis, for use of one machine.....	425 00	
W. V. Phillips, Providence, R. I.....	600 00	
	$29,252 02	

PAID

29 Cost in getting my patent extended by the Commissioner of Patents in 1869, in taking testimony, counsel's fees, printing, and other necessary expenses, including Patent Office fee.. $1,927.84
Charles M. Keller, Counsel, Feb. 4, 1872.... 890.00
Peter Van Antwerp, Counsel..... 3,421.25
R. M. Stilwell, U. S. Commissioner..... 55.00
—— Osborn " " " 40.00
Kenneth G. White, Master U. S. Circuit Court 800.00
30 Re-issued Patent..... 100.00

$7,234.09

Personal services rendered in collecting, prosecuting infringers, obtaining witnesses, serving papers, and traveling expenses, estimated at $1,000 per year. $7,000.00

$14,234.09

Total Receipts $29,252.02
Total Expenses.....$14,234.09
31

Net amount realized.....$15,017.93

JACOB A. CONOVER.

State, City and County of New York, ss.:

Peter Van Antwerp, being duly sworn, says: I am an Attorney and Counsellor-at-Law, and do business in the City of New York. I have been the Attorney and Solicitor and one of the counsel for the above
32 named Jacob A. Conover, ever since the granting to him of the Letters Patent above referred to, and have had charge of the business and suits in relation thereto. That almost immediately after said Conover put his machine in operation, his patent began to be infringed upon; that deponent brought the first suit at law in the Circuit Court of the United States

for the Southern District of New York, on the 13th
day of May, 1856; that said suit was tried before 33
Honorable Judge Hall, of the Northern District of
New York, then holding said Circuit, and a jury, at
the October Term of said Court, 1856; and said Con-
over failed to obtain a verdict, the jury, as deponent
was informed by one of their number, standing eleven
in his favor against one for the defendant; and said
Conover, in consequence of his inability to pursue an
expensive litigation, was compelled to compromise
with the parties at a great disadvantage. And de-
ponent further says that afterwards, and on the 28th 34
day of September, 1858, he commenced another suit
at law against John H. Rapp in said Circuit Court,
for infringing said patent; that said action was tried
on the 4th day of November, 1858, before the Honor-
able Judge Ingersoll, of the District of Connectient,
then holding said Court, and a jury, and a verdict
was obtained in favor of the plantiff; that a motion
for a new trial was made by the defendant, and the
same was heard by the Honorable S. Nelson, a Jus-
tice of the Supreme Court, of the United States, and 35
said motion was denied.

And deponent further says, that in the month of
August, 1864, a suit was commenced in said Circuit
Court against John H. Peipho, and John H. Dohr-
mann, in equity; that said suit was tried before the
Honorable W. D. Shipman, a Judge of the District of
Connectient, holding said Circuit, who rendered a judg-
ment thereon against said defendants, on the 28th day
of March, 1868. And deponent further says that since
said last mentioned action he has been obliged to com- 36
mence over twenty-five other actions against other in-
fringers; that motions for injunctions have been made
before his honor S. Blatchford, the Judge for the South-
ern District of New York, on two of the additional ac-
tions, which motions were contested and decided in
favor of said Conover, and that others are now pend-

ing; and that there are, as he is informed and believes,
37 at least 75 other infringing machines in the Cities of N. York, Brooklyn, and Jersey City alone, and a number of others in other places. That during the trial of the several contested cases, there were put in evidence against said patent, over 30 different machines and letters patent, as having been used or patented in the United States or patented or described in publication in England, previous to said patent, and the ablest counsel in the country were employed in the defences; among them George Gifford, Levi S.
38 Chatfield, Amos K. Hadley, E. W. Stoughton, Horace Andrews, and W. P. N. Fitzgerald, of New York, and J. H. B. Latrobe, and J. N. Steele, of Baltimore, and a large number of witnesses and mechanical experts examined and that in all such trials except the one above referred to, where there was a disagreement of the jury, said patent was sustained.

And deponent further says he has been engaged in upwards of a hundred patent cases, many of them severely contested, but none that he recollects which
39 equaled the efforts to defeat the claims under said Conover's patent, nor any where from the beginning to the end of the several controversies, there were such persistent and successful efforts to delay and protract the proceedings, that in consequence thereof deponent has been obliged to attend before the Court and its examiners and masters over 300 times, and said Conover has been obliged to attend at least two hundred and fifty times. That deponent was informed by a number of the wood dealers and infringers, and
40 among others by John H. Dohrmann, whose affidavit in the action of Conover vs. Greene is hereto annexed, that there was a regular combination of infringers and wood dealers holding meetings and contributing money and other aid in the defences and attempts to defeat said patent; that in consequence of such combination and the hindrances and delays,

Mr. Conover was subjected to very long expenses (in a single case upon accounting alone the master's fees 41
was $500) and great loss of time in his business, and was obliged to make unfavorable compromises with infringers and others, and lose a large part of the benefits he would otherwise have derived from his invention.

And deponent further says that during the protracted trials, from the opinions of the judges and mechanical experts, the infringers, discovering that the *claims* in the original patent did not *separately* and *specifically* cover all the points of his invention, 42
after a variety of *unsuccessful* efforts to construct machines for splitting wood which would not conflict with his claims as they originally stood, they so far succeeded as to construct machines which produce the result to a considerable extent, by omitting one or more of the elements of the invention, or by altering the construction thereof, and *disguising* them in such manner that sufficient question might be raised to enable them, by still combining together, to keep said Conover engaged in litigation for another long 43
period of time. That upon consultation with deponent and other counsel who had become familiar with said patent, said Conover was advised to amend and re-issue the same. That at that time there were several actions pending, and among them two—one against Henry Mevs, and the other against Kohn and Kemmelstiel, all of the City of New York (who at the time were responsible parties), in which deponent believed and so advised said Conover, a considerable amount could be recovered; that the final 44
judgment therein could probably be obtained in a very short time, and that if he re-issued his patent before such final judgments were obtained, he would not only lose the large amount of money he had expended but the amount it was believed he could recover.

And deponent further says that he pushed said ac-
45 tions forward as rapidly as he possibly could, but was met at all points by about every subterfuge and technical device that could be invented to hinder and delay their progress, so that final decree against Mevs (which was for $2,500\frac{08}{100}$) could not be entered until the 10th day of June, 1874, and against said Kohn and Kemmelstiel (which was for $5,663\frac{53}{100}$) on the 3d day of March, 1875. And deponent further says, that among other infringing machines which were introduced after said Conover's
46 patent, were a number made by one Darwin A. Greene, who pretended and held out to the public, that he had letters patent of the United States therefor; that it was for the use of these machines that recoveries were had against Dohrmann & Peipho, Mevs, and Kohn & Kemmelstiel. That shortly after the judgments against Dohrmann & Peipho, the said machines were changed in form by shortening the travelling bed which carried the wood through the machine, causing it to carry the wood
47 up to the knives or splitters only, leaving the wood remaining, and being carried on said travelling bed to push the split wood out of the way, and additional blocks to the splitters. That said Greene and the other infringers gave out and pretended that said last named machines were constructed in accordance with the description in certain letters patent granted in Great Britain on the 14th day of May, 1825, to H. O. Wetherly, and large numbers of the infringers and others have been, as he is informed and believes,
48 lead to believe that such was the case, and a considerable number of machines have been put in operation under such impression.

And deponent further says that said Wetherly patent has been put in evidence against said Conover patent, and especially in the case against Dohrmann & Peipho, and was fully considered by his Honor

Judge Shipman in that case, and passed upon by him. 49

And deponent further says that in addition to his being engaged in the trial of patent cases during upwards of 25 years last past, he has during all that time been in the habit of examining machinery and letters patent and giving opinions in reference thereto, and also of drawing specifications for and procuring letters patent; that he has examined the said letters patent of H. O. Wetherly, has also consulted with and examined mechanical experts in reference thereto and believes he 50 fully understands the same, and does not believe the same as described in said letters patent ever was a practical or useful machine for splitting cord wood into kindling wood; among the reasons for his opinion is, that the knives pass entirely through the bed on which the blocks stand to be split, that the blades or splitters being set at right angles to each other and in diagonal directions across the bed, slots must be cut through it in corresponding directions, of sufficient capacity to allow knives of requisite thickness 51 to pass through easily; that as said knives require to be about three quarters of an inch thick, the slots will leave two clear openings entirely across the bed, each one inch in width; now, as the first cut of the blade or knife cuts or splits from the block presented to its action just so much as presented to it, and as the blocks are irregular in size and generally triangular in shape, and as the most desirable size of the sticks for kindling is from one inch to 1¼ inches, many smaller pieces will inevitably be produced; when 52 these reach the second slot or opening in the bed, some of them will fall through or become wedged in the slot, preventing the discharge of the wood already split, and thereby crushing and breaking it up—stopping the feeding of the blocks and injuring the machine; and as the last of said knives or split-

ters must very frequently leave similar small pieces
53 or slivers behind it which are equally liable to fall through or become wedged into the first slot, in which case also the discharge and feed are thereby prevented, and furnish other and additional reasons why the Wetherly machine never was a practical or useful machine to split blocks into kindling-wood. And especially so where the blocks are sawed from cord wood such as is used in this country, which is always irregular in shape.

And deponent further says that he has examined a
54 number of the machines that are claimed to be constructed in accordance with said Wetherly patent, and has had a large number of others examined in the Cities of New York, Brooklyn, and Jersey City, by a competent expert familiar with wood splitting machines; and from his own examination and report of said expert none of them were constructed in any respect substantially like the Wetherly machine; that they all have solid beds for holding the blocks of wood under the action
55 of the knives, without any slots or openings whatever; that the stocks to which the knives or splitters are attached are all reciprocated by a positive crank movement, which forces the knives or splitters into the wood and pulls them out, while in the Wetherly machine the rod to which the knives or splitters are attached is elevated by means of revolving arms, h h, operating on the lower sides of lugs or arms, j j, secured to the rod at the height desired, and is then released from the lifting mechanism and falls by its
56 gravity; the weight of the rod and knives constituting the only force which drives the knives or splitters by a sudden blow into and entirely through the wood and bed. That in this latter aspect there is also a substantial and material difference between Conover's invention and the Wetherly machine, for the reason that by the crank movement in the for-

mer the power and force can be regulated to split blocks of any required length, which in the business 57
varies from 3 to 8 or 9 inches, while in the latter the same force is expended whether the blocks are 3 or 9 inches in length.

PETER VAN ANTWERP.

Sworn to before me this 31st day of January, 1876.

CHARLES M. STEFFORD,
Notary Public, New York County.

58

The following evidence was before the Commissioner of Patents on the first application for extension:

My name is John B. Spafford; I am 55 years of age, and reside in the City of New York. I am in the wood business, selling wood by the cargo, and have been for the last 20 years and upwards. I know Mr. Jacob A. Conover, the petitioner, and have known him from 12 to 15 years last past. I know of his introducing kindling-wood split by machinery—this was about 12 or 15 years ago. This was in Horatio street, 59
in this City, his present place of business. I saw the machine in operation there about that time I became acquainted with him, and have often seen it in operation there since. I have supplied him with wood ever since, more or less. I mean ordinary cord wood by the cargo.

In former times, kindling-wood was sold by the retailers, by the cart-load, and then it was sawed and split by hand, the ordinary buck-saw and axe being used at the residence of the consumer. Now nearly all 60
of it is sawed by steam power and split by machinery, and furnished to the consumers ready for immediate use. Prior to the introduction of these machines a great deal of charcoal was used for kindling purposes. As far as my knowledge goes, kindling wood split by machinery has generally superseded charcoal for

kindling purposes. Kindling wood is now furnished
61 to consumers at a cheaper rate than it was when cut and split by the old process. I should suppose it would be cheaper than charcoal. When charcoal was used some other material was required to be used to light the charcoal. I never knew grocers to keep kindling wood for sale to consumers, previous to the introduction of these machines. Nearly all the groeers now sell kindling-wood, cut and split by machinery. It is also now peddled about the street, and sold to consumers, in small quantities. Previously charcoal was
62 peddled about the streets and sold by the barrel.

And in answer to cross-interrogatories propounded to the witness by A. Pollok, Esq., the witness says:

I understand Mr. Conover's invention to consist in splitting wood by machinery. I do not use it. All I know about it is that it splits wood. I have heard people say that it would split wood better than any other machine. I don't know anything more about other machines than what I have heard people say. I know nothing about machinery. I am no mechanic.

63 Q. What is the difference between wood split by hand and wood split by machinery?

A. I don't know any difference, except that it would be cheaper.

Q. How much cheaper?

A. That I don't know.

Q. Do you know of your own knowledge that wood split by machinery was unknown in the United States prior to Conover's introducing wood split by this particular machine?

64 A. That I don't know.

Q. How many machines does Mr. Conover use in his establishment in Horatio street, or elsewhere?

A. I have seen two in his establishment in Horatio street. I don't know of any others that he is using.

Q. Does he supply the whole city with kindling wood, or are there other parties engaged in the business of splitting wood for kindling fires?

A. There are others parties.

Q. You say in your examination in chief, that in former times kindling wood was sold by retailers by the cart-load, &c. Do you mean to say that it was impossible at that time to buy kindling-wood split and in quantities such as might be needed? And if so, why was it impossible? 65

A. I never knew any, so far as my knowlede goes. It might have been done.

Q. Can you suggest any reason why kindling-wood could not have been sold prior to Conover's alleged invention? 66

A. No, I cannot.

Q. Do you know how much charcoal is being made and sold now?

A. No, sir.

Q. Do you know how much charcoal was made and sold, say 15 years ago?

A. I don't know.

Q. Do you know whether more or less charcoal is used now for kindling wood purposes than there was used, say 15 years ago? 67

A. I don't know; I should say there was not.

Q. Why should you say so; what means of knowledge have you?

A. It was formerly a common thing to see from 6 to a dozen vessel loads, schooners and sloops, of charcoal, and they are not seen now.

Q. What is the price of kindling wood in this city now?

A. I don't know as I am competent to tell you; the prices vary. I sell by the cargo in cord wood. 68

Q. What was the average price of kindling-wood, in this city, say five years ago, sawed and split?

A. I don't know.

Q. What was the average price of kindling wood, sawed and split, say 15 years ago?

A. I don't know.

Q. If you don't know what the price of kindling
69 wood now is, nor what it was 5 or 15 years ago, how could you swear that it is cheaper now than it was 15 years ago?

A. I did not swear so.

Q. You say that when charcoal was used some other material was required to light the charcoal; can you light kindling-wood without a similar material?

A. Certainly not. You would have to have paper or a match. You could not kindle charcoal with a
70 match, in my opinion.

Q. Could you kindle the kindling-wood, such as is sold in the market, without either paper or shavings, unless you consumed more matches than is economical?

A. I should think not. That would be my impression.

Q. Is there anything peculiar in kindling-wood sawed or split by hand that would prevent its being sold by grocers, or peddled about the streets; and
71 if so, state what?

A. I know nothing more than this; there would be nothing to prevent it, that I know of.

Direct resumed:

Q. When you said on your direct-examination, kindling-wood is now furnished at a cheaper rate than when it was cut and split by the old process, did you have any reference to the market price of cord-wood in the stick, or to the advantage in the use of machinery?

72 *Objected to.*

A. I supposed it was cheaper by machinery. Cord wood has varied in price during the last 15 years from five to fourteen dollars per cord.

Cross-examination resumed.

Q. How much does it cost to saw and split a cord

of kindling wood by hand, and how much by machinery. 73

A. I don't know.

My name is Walter Palmer, I reside at No. 736 Fifth street, in the City of New York; I am 48 years of age, I am in the kindling-wood business, and have been for the last 11 or 12 years, in this city. I know Jacob A. Conover, the petitioner, and have known him between 10 and 11 years. I have used machinery for splitting wood between 10 and 11 years past in the City of New York. In the first place, I used the single axe or knife, fed by holding the block in the 74 hand. Afterwards I used Conover's machine; I commenced using his machine between 10 and 11 years ago. When I first commenced the wood splitting business, we made bundles just as we do now. I have had wood sawed and split by hand with a buck-saw and axe by some customers who preferred to have it done at the house. I have paid from 7½ to 8 dollars per cord to have it done in that way. That was the ordinary price for the work, sawing from three to four cuts to the length of cord-wood, four 75 cuts making the pieces from 8 to 9 inches long; the length of cord-wood averages about three feet six or eight inches. Kindling-wood for the market, groceery trade, is 3½ inches in length. This would cost a great deal more than the long cuts above stated. In a bundle of wood for grocers' use, &c., there are from 11 to 13 cuts to the length of cord wood. The cost per cord for sawing and of splitting by the Conover machine, in lengths of 3½ inches, is about $1.50 per cord. It is very seldom that any 76 portion of the wood that I furnish to consumers is cut and split at their houses by hand—less now at their houses than when I first began. When I first began, I supplied grocers in a small way; it has increased. The business which I do with grocers has increased at least three-fold.

Cross-examined by MR. POLLAK:

77 Q. You manufactured and sold kindling-wood, sawed and split in small bundles, before you knew anything of Conover's machine. Is that so?

A. Yes, sir; before I used his machine.

Q. And you sold such kindling-wood to grocers for the convenience of customers, before you used Conover's machine. Is that so?

A. Yes.

Q. What do you pay for kindling-wood per cord to be cut up.

78 A. I am paying at present from eight and a half to ten dollars.

Q. What do you charge the grocers per cord for kindling wood, sawed and split and bundled?

Objected to.

A. We sell it for two dollars and fifty cents delivered, per hundred bundles, and two twenty-five at the yard.

Q. How many such bundles do you get out of a

79 cord of wood?

A. From 650 bundles to 825 bundles; it depends upon the size and length of the wood.

Q. Is not most of the kindling-wood sold in very small quantities, and to the poorer classes?

A. I think it is.

Q. What does the grocer charge per bundle, if you know?

A. I believe they get about 3 cents per bundle, which is the usual price. In some places among the

80 better class the grocers get 4 cents per bundle Usually about 50 cents per hundred advance on the wholesale price.

Direct resumed.

Q. What other cost besides sawing and splitting is there to wood put up in bundles, and how much?

A. About three dollars and fifty cents for bundling per cord. 81

Q. Do you sell kindling wood sawed and split that is not put up in bundles, and to what extent?

A. I do; over $\frac{1}{3}$ of what I sell.

Q. At what price per cord is this sold by wholesale dealers?

A. It is selling at the yard from thirteen fifty to fifteen dollars per cord. There is about one-tenth part of the cargo, however, which is knotty or rough wood, which is sold at present, sawed and split, at ten dollars and fifty per cord. 82

Cross resumed.

Q. In your judgment, how does the cost of sawing by steam or machinery compare with the cost of sawing with the buck-saw by hand?

A. I think it would cost four times as much by hand as by steam.

Q. How does the cost of splitting by Conover's machine compare with the cost of splitting with the lever axe? 83

A. It would make a difference in bundle or long wood, that is, eight-inch wood. I think it would cost five times as much by the axe as by the Conover machine.

Q. What is the proportion in the dollar and a half it costs you to saw and split a cord, of the cost of sawing and of splitting?

A. When I gave you the cost of sawing and of splitting bundle-wood per cord, I include three men in that, that have nothing to do with the sawing and splitting. They are carrying the wood and bringing it to the saw and from the splitter. It costs a little more for the sawing than it costs for the splitting—a trifle more. 84

Direct resumed

Q. Why does it cost more to saw per cord than to

split? A. It costs me two dollars per day for the
85 man to saw, and about $1.75 per day for the use of the splitting machine and the boy to feed it, one dollar being the license fee per day for the machine.

Q. Your estimate is based on five cords per day; what is the capacity of the machine, that is, how many cords can you split with it in a day with the same help to feed it? A. About 10 cords of bundle-wood.

Q. Does the price you at present pay for cord-wood say from 8 to 10 dollars a cord, include the cost of
86 putting it in the yard, or is it the cost delivered on the dock? A. It is the cost delivered on the dock, it varies from 50 to 75 cents per cord to put it into the yard from the dock, averaging about 62½ cents per cord.

Cross resumed:

Q. When did you first commence to use a Conover machine? A. I think it is a little over 10 years ago.

87 Q. Did you pay, during all that time, a tariff of $1 per machine and per day? A. I generally paid monthly, and I paid all up to April 1st, 1869.

Q. How much did you pay in all to Conover? A. I cannot answer that without referring to my books; it averages now about $25 per month for each machine. I only pay for the days I use the machine.

Q. Did you pay as much as $5,000 in all? A. I don't think I did. I only had two machines for the
88 last five years; previous to that I only had one.

Q. Is there not a great difference between the measurement of cord wood and that of split wood? A. There is a great difference; it increases, I think, a third in bulk. I always measure it before I cut it.

Q. How much would a cord of wood measure? A. We buy running measurement—eight feet long

and four feet high—without regard to the length of the wood. Of course we pay less for short than for long wood. 89

Q. Do you sell wood in boxes? A. No, sir.

Direct resumed.

Q. Did you ever measure wood by the cord after it was cut up and split in kindling wood? No, sir.

Q. How do you ascertain how many bundles are made from a cord? A. I measure the cord before I cut and split it, and keep it by itself and let a boy bundle them, and then count the bundles. 90

Cross resumed.

Q. Do you sell one hundred bundles at a certain price, without regard to the number of bundles you get out of a given cord of wood? A. I do; I have to be governed by the price, and not by the number I get out of a cord.

Q. Then you charge more for one hundred bundles from one cord than you do for one hundred bundles from another cord, according to the number of bundles produced from one cord; is that so? A. No, sir. We lose on the short wood and gain on the long wood. 91

Q. In your former testimony you have stated that you were engaged in the business of splitting kindling-wood; please state as near as you can, about how much kindling-wood is split in New York per annum by the wood-dealers; about how much you split per annum; what machine do you use; what it would cost to split the wood by hand per cord; and what it costs by the Conover machine for splitting per cord, and what experience, if any, you have with the lever axe, and what your opinion of it is? A. There are, I should think, from 75,000 to 80,000 cords split by machinery per annum. I split per day from 12 to 15 cords, making from 3,500 to 4,500 cords per annum. I use Conover's machine. If it was split in the yard by 92

hand, and make a business of it, it would be cheaper
93 than if it were done at the house. It might, I think, be done for a dollar and a quarter a cord, when split by hand. To split by Conover's machine, it costs from 6 to 7 cents per cord, if you have as much as the boy can do; if you don't, it would cost more. The boy's wages who attends the machine are paid by the week. I have had experience with the use of the lever axe in splitting kindling-wood; I think I used it about a year, perhaps more. I have not much opinion of it; I could not accomplish much with it.
94 It was difficult to get the boys to work it. I could not do enough work with it to make it answer for my business.

Cross-examined by A. Pollak, Esq.

Q. Who did you get the lever axe machine from?

A. A man by the name of Jacob Palmer, I believe, 25th street, New York City.

Q. Was it a patented machine?

A. No, sir.

95 Q. What did you pay for it?

A. I don't remember; I think it was $75.00. It worked by steam power. The wood was held up by hand.

Q. How many Conover machines are there in use in this city?

A. To the best of my knowledge, 16 or 17. I don't know exactly.

Direct resumed.

96 Q. Please state whether you knew of the lever axe machine before you had heard of the Conover machine.

A. I could not say. I heard of the Conover machine, before I used the lever Axe machine.

My name is John H. Hesman. I am forty-four years of age. I reside 785 Greenwich street, New 97
York City. I am engaged in the business of splitting wood by machinery.

Q. State about what amount of kindling-wood is split by the wood dealers in the City of New York per annum, and what would be the cost of splitting same by hand, or by Mr. Conover's machine?

A. I calculate about 100,000 cords of wood are split by wood dealers per annum in the City of New York, and it would cost to split it by hand about $2.00 per cord; and it would cost to split it with Mr. 98
Conover's machine about 12 cents per cord, for the boy to run the machine, and about 6 cents more a cord for the wear and tear of the machine, and looking after it.

Q. Did you ever use the lever axe for splitting wood?

A. I did for three months.

Q. Why don't you use it now?

A. It was too expensive. I could not make it pay, and I could not get anybody to work on it. It was 99
dangerous. It cut the men's fingers off, and would not do enough work. A boy could not split more than two cords and a half a day with it.

Cross-examination by MR. POLLAK.

Q. What personal knowledge have you of the amount of wood split in New York per annum?

A. I know there are so many in the business, and I have figured up one more and the other less, about six or seven cords a day a piece; therefore, I made 100
my calculation about 100,000 cords per annum.

Q. How many are in the business in New York City?

A. There are only 41 or 42 in New York City. A great many do more than 6 or 7 cords a day. I do more business myself. Last year I split about 3,650 cords.

Q. Do all the 42 use the Conover machine?

101 A. No, sir.

My name is Theron Kelsey; I am 42 years of age; I reside at 359 Pacific street, Brooklyn; I am a coal and wood dealer, of the firm of Kelsey & Loughlan.

Q. Are you engaged in the business of splitting kindling-wood by machinery? if yea, what machine do you use?

102 A. That is a part of our business in Brooklyn. We are using Mr. Green's splitter. It is licensed now by Conover since the law suit.

Q. Please state as near as you can, about how much kindling wood is split in Brooklyn per annum by wood dealers; about how much your firm split per annum; what it costs you to split the wood by hand per cord, and what it costs per cord to split it by the machines used by your firm?

A. I believe the quantity of wood consumed by
103 famalies in Brooklyn, which is split by hand and by machinery, to be about 50,000 cords per annum, and I think about 20,000 cords of this is machine splitting. Our firm splits between 2,000 and 3,000 per annum. It depends on the length as to how much it would cost to split it by hand. I can't speak from my own knowledge of Conover's machine, but only of the cost of the Greene machine. Now the bundle wood of the Greene machine would cost about 16 to 20 cents per cord for the immediate attendance of the machine. A boy attends the ma-
104 chine. The same wood to be split by hand would cost $2.00 per cord. What we call family wood would cost $1.25 per cord to split it by hand. We also have a single knife machine on a shaft, which costs about 50 cents per cord for family wood, and about 75 cents per cord for bundle wood. The wood split by machinery is mostly bundle wood.

State, City and County of New York, ss.:

105

Abraham J. De Baun, being duly sworn says, he is 56 years of age, resides in the City of Brooklyn, and is a dealer in kindling-wood in said city, and has been in said business in said city for upwards of 19 years last past, and has, during all that time, used what is known as the Conover splitter, under a license from Jacob A. Conover of the City of New York. That previous to going into said wood business he resided in the City of New York, and was there engaged in the milk business for about 5 years, and dealt with gro- 106
cers and others; that he well recollects the first introduction of kindling-wood being put in market and sold by grocers and peddlers about the streets, to be sold in quantities to accommodate all classes, and that it was soon after Mr. Conover's machine was put in operation; that previously to that charcoal was kept by grocers, and peddled and used for kindlings; that very soon after Mr. Conover's machine began to be used, kindling wood began to be kept by grocers and peddled, and in a very short time after 107
its introduction it almost entirely took the place of charcoal as kindling material. That when he began the business in Brooklyn there was none kept there by grocers or peddled about the streets, and he knows that he first introduced it and had considerable difficulty in doing so: that there seemed to be a prejudice against it, or a doubt of its utility, which however soon gave way, and its use soon rapidly increased.

And deponent further says that very soon after its success was established, other machines began to be 108
introduced, and although they were inferior to the Conover machine, and did not split so good for economical use, they interfered to a large extent with deponent and the other licensees of Mr. Conover; and such interference multiplying and increasing, and many of the parties being irresponsible, he appealed

to Mr. Conover to protect him, or make a deduction
109 in his license fees; that said Conover informed him that it would be next to impossible just then to carry on suits against all the parties infringing, especially so as new ones were constantly springing up, and those already infringing were constantly changing, consented to reduce the amount to be paid one half, until such time as he could more fully protect deponent, and this was upward of seven years ago.

And deponent further says he has had wood split by hand, and known about the cost thereof, and he
110 has made an estimate of the difference in expense between machine and hands-plitting, and in his judgment taking all the costs, charges, and expenses, including wear and tear of machinery, power and every thing into consideration, there is a saving of at least $2.50 per cord by the use of the machine.

And deponent further says that he has seen several of the interfering machines and has seen them in operation, and knows that the Conover machine is greatly superior to any he has seen, both in the rap-
111 idity of its work, and the quality of its production.

ABM. J. DE BAUN.

Sworn to before me, this First day of February, 1876.

WM T. LETT
Notary Public for New York County and State.

STATE OF NEW YORK, *City and County of New York* } ss.:
112

JOHN H. HESSMAN, being duly sworn, says he resides in the City of New York; is fifty-one years of age, and is engaged in the kindling-wood business in said city, and has been for upwards of fourteen years last past. That he uses a machine for split-

ting wood under a license from Jacob A. Conover,
and has used the same for about fourteen years last 113
past; that he recollects the time when Conover applied
for an extension of his patent, and deponent was
examined as a witness upon such extension; that he
believes that the introduction of machines has con-
ferred a great benefit upon the public, and that the
inventor thereof is justly entitled to a suitable re-
ward therefor. That he knows of his own know-
ledge, that for at least twelve years last past, com-
binations of wood dealers have been in existence to
defeat the claims of said Conover, and that large 114
sums of money have been collected and disbursed
for that purpose. And deponent further says that
after said Conover procured his extension he believed
it to be valuable, and that the rights under said ex-
tension was worth upwards of $20,000 for the City
of New York alone, and was one of a party of a
number of wood dealers in the City of New York,
who held a meeting and made an offer to said Cono-
ver of $20,000 for such right for said City.

And deponent further says that he knows of his 115
own personal knowledge that said Conover has been
obliged to make large deductions from his ordinary
license fees in consequence of the opposition by
parties who refused to respect his claims.

his
JOHN H. ⋊ HESSMAN
mark

Sworn to before me, this }
29th day of Jan., 1876, }

116

O. W. Flanagan
Notary Public, N. Y. Co.

State, City and County of New York. ss.:

117 DANIEL H. CARPENTER, being duly sworn, says he resides at South Orange, in the State of New Jersey; is 48 years of age, and is engaged in the manufacture and planing of lumber, and has been for about 23 years last past at 39 and 41 Bethune street, in the City of New York. That he knows Jacob A. Conover of said city, and has known him for about 25 years last past. That in the year 1854 said Conover occupied apartments in the same building in Beth-
118 une street aforesaid, engaged in the business of stair building. That deponent well recollects that during the summer and fall of said year said Conover was engaged in constructing a machine for splitting wood. That deponent was frequently in his apartments seeing him at work at it, and had frequent conversations with him and others occupying shop-room in said buildings, in relation thereto, and deponent recollects that it was the opinion of himself and others who saw it that it would prove a failure, and
119 that even if he succeeded in making it operate successfully in splitting wood, he would be unable to make it pay.

And deponent further says that when said Conover put it in operation he went to see it work and was much surprised at its success.

And deponent further says that previous to his going into said lumber planing business he was engaged for about 8 years in the retail grocery business as a clerk: for the first 3 years with Peter J.
120 Shultz, at the corner of Washington and Christopher street in said City, and for the remainder of the time with Henry Carlough, in said City; that during all the time he was so engaged in said grocery business it was the practice to keep charcoal to be sold in small quantities to customers for kindling hard coal fires, and a large amount was sold by grocers for that

purpose, and peddlers went about peddling it. That shortly after Conover began to introduce his kindling wood, it began to take the place of charcoal, and soon almost entirely superseded it: and from deponent's knowledge and experience in the matter, he believes that the cost of kindling a hard coal fire by the use of wood as now manufactured and furnished would not exceed one half the cost of kindling by the use of charcoal. 121

DANIEL H. CARPENTER.

Sworn to before me this 28th day of January, 1876. 122

[L.S.] JAMES A. PALMER.
Notary public for the Counties of Kings and New York.

STATE OF NEW JERSEY, *County of Hudson.* } ss.:

ROBERT DONSHEA, being duly sworn, says he is Forty-seven years of age, resides in Jersey City, in the County of Hudson and State of New Jersey, and has been engaged in the kindling-wood business ever since the year 1858, using a regular Conover machine for splitting the wood into kindlings; that the business of supplying such wood to families and grocers has greatly increased since he commenced said business, so for the past five or six years there has been cut up and split into kindlings, and sold in said County of Hudson, on an average of at least 10,000 cords per annum, at least nine-tenths of which has been split by machines. 123 124

And deponent further says, that as soon as it became known that said Conover machine was a success, a number of other machines were introduced into said county, which deponent is informed and believes are infringements on the Conover patent; that deponent's business was seriously interfered with by such machines, and he made application to said Conover

to make a deduction from deponent's license fees,
125 until he could be protected from the interference by such alledged infringers and said Conover made a deduction of fifty dollars per year therefrom.

ROBERT DONSHEA.

Sworn to before me this 31st day of January, 1876.

GEORGE E. CUTTER,
Justice of the Peace.

STATE OF NEW JERSEY, } ss.:
126 *County of Hudson.* }

MARTIN DAVIES, being duly sworn says, he resides at Hoboken, County of Hudson, in the State of New Jersey, is 39 years of age, and is engaged with Isaac Ingleson in the kindling-wood business, and has been for five years last past; that when he commenced said business he sawed the wood into blocks with saws driven by steam power, and employed men to split it by hand with axes; that an *extra* smart man at two dollars per day wages, with the assistance of
127 a boy to place the blocks in convenient reach, and take away the split wood could split one cord of wood per day into the proper size for kindling. That after operating in that way for about three months, he found they could not compete with parties using machines; besides, their customers complained that their wood was not properly split. They purchased a regular Connover machine and obtained a license for its use at one dollar per day for each day on which said machine was used; that they found they could
128 split eight cords per day with the assistance of a boy at 33⅓ cts. per day to feed it; that the wood was split much better, and that the difference between the cost of splitting by the machine, taking into consideration the license fee, cost of power, wear and tear of machinery, feeding, and all other expenses incident to its use, is at leas $2.50 per cord less than by hand, besides doing it much better.

And deponent further says that in a short time their business was seriously interfered with by the 129
use in Hudson County, New Jersey, of three or four infringing machines, as he is informed and believes, and appealed to Mr. Conover for protection ; that h was informed by him that he already had a number of suits on hand which he was pressing to judgment and at a heavy expense, and he could not just then afford to enter into any more prosecutions, but would do so as soon as possible, and in the meantime would make reasonable deduction from their license fees ; that said Conover has since made such dednc- 130
tion to the extent of two-thirds thereof.

And deponent further says that he is informed and believes said Conover has commenced actions for infringement of his patentag ainst three of the parties, viz.: Sprouls & Murphy, John G. Loehr, and James R. Whyte, all of Jersey City, in said County; all of whom, as he is informed and believes, have appeared in said actions by the same lawyer who is employed to defend a number of other infringers against whom suits have also been commenced. 131

And deponent further says that he and his copartner were invited to attend a meeting of wood dealers at Germania Assembly-rooms in the City of New York, in September last; that they attended once; that there was a large attendance at that meeting; that it was stated in said meeting that the object was to organize a combination, and raise money to defeat said Conover's claims under his patent ; that deponent declined joining the combination, but he knows that the parties above named as being sued, attend 132
ed and took part in the meeting of said combination.

MARTIN DAVIES.

Sworn to before me, this 31st day of January, 1876.

F. M. McDonough,
Justice of the Peace.

State, City and County of New York, ss:

133 WALTER PALMER, being duly sworn, says he has heard read his foregoing evidence on examination on the 15th day of April, and 4th day of May, 1869, in the matter of the application of Jacob A. Conover for an extension of his letters patent for a machine for splitting wood, and knows it is correct and true in all respects; and deponent further says that the lever-axe referred to in his evidence was operated by steam power, had a positive up-and-down movement, and worked through a slot or side bars, which stripped
134 off any wood which adhered to the axe, operating substantially the same as the clearer plate in the Conover machine; and deponent further says that what he calls the lever-axe is the same thing as what was also called the single-axe machine, operating in the same manner substantially, by positive up-and-down motion, and having the same clearer to strip the wood from the axe.

And deponent further says that he attended a meeting of wood dealers, of the City of New York,
135 using Conover's wood-splitting machine, which was a very full meeting, about the time that said Conover got the extension of his patent, and we then and there offered him the sum of twenty thousand dollars for the exclusive right to use his patent wood splitter for the City of New York for the extended term; that Conover would not accept of it, but offered the same to us for from $30,000 to $35,000; but he not accepting of our offer, there the matter ended; that among others that attended said meeting was George Kuhn,
136 Dohrmann & Peipho and John H. Hessman.

WALTER PALMER.

Sworn to before me this }
29th day of Jan., 1876. }

CHAS. A. DICKINSON,
Notary Public, Kings Co.

The decisions and opinions of the judges of the United States Court, in the several cases referred to in the affidavits of Jacob A. Conover and Peter Van Antwerp, in reference to the patent in question, will be found reported as follows: 137

Conover *vs.* Dohrmann, &c., 3d Fisher, 382—Judge Shipman.

Conover *vs.* Mevs, 3d Fisher, 386—Judge Blatchford.

Conover *vs.* Roach, 4th Fisher, 12. Judge Hall.

Conover *vs.* Rapp, 4th Fisher, 57. Judge Ingersoll.

Johnson *vs.* McCullough, 4th Fisher, 170. Judge Giles. 138

Conover *vs.* Mevs (on accounting), 6th Fisher, 506. Judge Woodruff.

139

140

UNITED STATES CIRCUIT COURT. 141

SECOND CIRCUIT SOUTHERN DISTRICT OF NEW YORK.

JACOB A. CONOVER,

vs.

DARWIN A. GREENE.

UNITED STATES OF AMERICA, } ss.
Southern District of New York }

142

JACOB A. CONOVER, the complainant in this action being duly sworn, says that at the time he obtained his original letters patent there was no machine in existence, to the best of his knowledge and belief, embracing any of the combinations granted to him in any of the claims of his re-issued letters patent referred to in this action. That immediately after he obtained his original letters patent he put machines constructed under it in use and soon found that they were a success. That within one year after he began 143
to supply wood, ready split for kindling, to families and grocers, there began to be infringements; that he immediately began prosecution. In his first action against Peter R. Roach, commenced May 13th, 1856, in this Court, there was a disagreement of the jury, standing eleven in his favor and one for the defendant; that the defendant then proposed to deponent to convey to deponent certain interest in certain other letters patent in consideration of a special right or license for the use of two machines in the City of 144
New York, and a grant for certain territory in some of the Southern States, which deponent at the time did not consider of much value; and as deponent had already expended a considerable sum of money in said suit, and was not in a condition to expend the additional money that would be required to continue

said prosecution, he accepted the offer and discontin-
145 ued the action. And deponent further says, that shortly after the termination of said action, he found that one John H. Rapp was infringing upon his said patent, and immediately brought an action against him in this Court, and the same was tried before the Hon. Judge Ingersoll and a jury, and a verdict was rendered in favor of the deponent sustaining his patent. That said Rapp subsequently settled said action by paying to deponent the sum of thirteen hundred dollars for damages and costs. And deponent
146 further says that shortly after the settlement of said action against said Rapp, he found another machine in operation by John H. Dohrmann and John H. Peipho, which he was informed and believes was made through the instrumentality of D. A. Greene, the defendant in, his action, who claimed that it was manufactured under letters patent granted to him. That from information, which he believed, the said Greene was a man of no pecuniary responsibility, and the difficulty of obtaining satisfactory information
147 as to the real makers of the machine, and knowing that Dohrmann and Peipho were responsible, he commenced an action against them on the Equity side of this Court, which was tried before his Hon. W. D. Shipman, and resulted in his favor and his recovering twenty-two hundred dollars. That he also commenced an action in this Court in Equity against Henry Mevs, and also against Joseph Kohn and Samuel Kemmelstiel, both, which were on the same kind of machines as that of Dohrmann and Peipho,
148 also put in use through the instrumentality of said Greene under his said *pretended* letters patent. That he recovered against both parties, but owing to the contest with said Kohn and Kemmelstiel on the accounting, and the death of said Kemmelstiel, the final decree was not entered in that case until the 3d day of March, 1875. And deponent further

says, that during all the protracted and vexatious proceedings in the three latter-named cases, the 149
said Greene appeared to be the most active manager for the defendants. And deponent further says, that during the foregoing period he has also been obliged to commence a number of suits against other parties for using the same kind of machines, also put in operation through the instrumentality of said Greene under his *pretended* patent, a number of which actions have been compromised.

And deponent further says, that in consequence of the said acts of said Greene, deponent has been 150
obliged to compromise with nearly all the persons holding licenses from him, to his loss and damage of upwards of ten thousand dollars, as he verily believes, and has also been prevented from granting license and from receiving pay for the use of his machine from others.

And deponent further says, that soon after the re-issue of his letters patent, he printed a notice thereof, and caused it to be delivered to a large number of wood dealers in the City of New York and its 151
vicinity.

That he called at 625 East 15th street, in this city where said Greene, with one John A. Colton, were manufacturing kindling-wood machinery, to notify them of said re-issue, and of his claims. That said Greene had left, and had gone to 111 Liberty street, in said city, from where, as he his informed and believes, he issued a circular, a copy of which is annexed to the affidavit herein of Thomas Van Antwerp, and that deponent has met with several 152
of them among the wood dealers in this city.

And deponent further says, that as he is informed and believes, said Green has been instrumental in putting at least one machine for splitting wood, made by him and said Colton, in operation and use since said re-issue, which machine is correctly represented

by the cut or illustration on the first page of said
153 circular.

And deponent further says, that since said re-issue a large number of the wood dealers in and about New York have held a number of meetings in this city, and organized an association or combination to defeat deponent's claims under his re-issued patent, and have subscribed and collected a considerable amount of money for the purpose, and that Greene has been one of the most active participants in said movements.

154 And deponent further says, he has lately, and since said re-issue, commenced an action for the use of one of said Greene machines against Louis C. Brosi, in which, as he is informed and believes, said Greene has made an affidavit for the defendant. That he has read a paper purporting to be a copy of said affidavit, which he is informed and believes was served in said actionby defendant's counsel on P. Van Antwerp, deponent's counsel, in which he says, among other things: "And deponent further says: that it
155 "is a notorious fact that the complainant's machine, "as described by its drawings and specification, is "not and never was a practical machine without the "aid of invention other than the original inventor, "and it has never been nor can it be successfully used "as patented without additional improvements, for "the reason that the blocks of wood on the moveable "carriage, in advancing toward or under the knives, "are not properly protected against falling over "and rendering the action of the knives useless.
156 "And deponent further says, that the Greene machine "possesses great advantages over the Conover "machines, in that they cost less, make less noise, are "not so liable to get out of order, and cut more wood "per hour, and require no foundation to rest upon "other than an ordinary floor; while the Conover "machines require a firm stone or brick foundation."

And deponent further says that he is also informed that said Greene also procured his former associate, 157
John. A Colton, to make an affidavit in the case of said Brosi ; that a paper purporting to be a copy thereof was also served on deponent's said counsel, in which affidavit said Colton is made to state, among other things: "And deponent further says, that he "knows that complainant's machine, as described "by its drawings and specifications, is not, and "never was, a practical machine, and without the "aid of other invention and improvement, it "has never been, nor can it be successfully used 158
"as patented. That among the reasons which render "said machine impracticable is the fact that ordinary "kindling-wood blocks, in advancing toward or under "the knives, are not properly protected against falling "over and rendering the action of the knives useless ; "and to avoid that difficulty deponent devised, many "years ago, side guides and springs to hold the wood "in position on the movcable bed, and such device "of deponent was adopted by him in the construction "of the Conover machine made by deponent and has 159
"also been adopted by other manufacturers of said "machines."

And deponent further says, that the said Greene and Colton, are both mistaken in their statements and opinions. That there is a machine now in use at his factory at the foot of Horatio Street, in this city, and which has been in use there by himself and successors for upwards of five years last past, which was constructed in full conformity with his specifications and drawings, and has no side guides or springs to the bed, 160
and has not had during any part of said five years. That originally it had springs and guides, but it was found they were unnecessary for the kind of wood he desired split with it, and he removed them. And deponent further says that shortly after putting one of his machines in operation, he found that in splitting

certain styles of kindling wood, the machine would
161 work better by the addition of guides and springs, and he accordingly attached guides and rubber springs to the machine, so as to operate at each side of that part of the bed opposite to the knives, and such guides and springs were so attached some time before said Coltton built any of his machines

And deponent further says, that after said copy of the affidavit of said Colton was served upon his counsel, he called upon said Colton with it, and showed and explained to him what he was made to say. That
162 said Colton informed him he had been called upon by said Greene, in company with some one else. That a rough draft of an affidavit had been drawn which he believed to be correct; that he never read or heard read the paper he signed his name to when sworn. taking for granted it was a correct copy of the one read to him before. That he did not understand at the time, that he was made to state that he first devised the guides and springs referred to for the Conover machine, because such was not the fact, as the first
163 Conover machine he ever saw had guides and springs attached, but the springs were made of rubber; that he, Colton, proposed to substitute steel springs for the rubber, and on consultation with said Conover, they were so substituted afterwards

And deponent futher says, that at said last named interview with said Colton, he made inquiries of him concerning said Greene's pecuniary condition and received a statement thereof, of which he made notes. That he procured his counsel to put the
164 same in the form of an affidavit. That such affidavit was accordingly prepared, and is hereto annexed. That he called on said Colton with it, and he read it, and said it was correct; but in consequence of the pecuniary matters between him and Greene, he did not wish to swear to it voluntarily, but would do so if subpœnaed.

And deponent further says, that the matters set forth in said form of affidavit for said Colton, correctly sets forth the statement concerning said Greene's pecuniary condition, given by said Colton to deponent. 165

And deponent further says, that he is informed and believes that at a meeting of the association and combination of wood dealers hereinbefore referred to, held at Germania Assembly Rooms, in the City of New York, certain proceedings were had and were embodied in a printed circular in the words and figures following, viz.: 166

"New York, October, 1875. At a meeting of the "Kindling Wood Dealers, held at Germania Assem- "bly Rooms, No. 291 Bowery, on Friday evening, "Oct. 8th, the following resolution was unani- "mously adopted:

"*Whereas*, A number of wood dealers using Greene's "Felton's, and other wood splitting-machines claim- "ed by Jacob A. Conover, as an infringement "on his patent, have neglected to contribute the sum "of fifty dollars towards defraying the necessary 167 "legal expense for contesting these claims;

"*Resolved*, that any dealer neglecting or refusing "to pay the above assessment on or before Monday "evening, Oct. 18th, 1875, is hereby deprived of all "legal support and benefit of this association, and "in order to be reinstated, will have to pay the sum "of one hundred dollars. John C. Rapp, Chairman; "James R. Whyte, Jr., Secretary; Committee—F. "Myers, L. C. Brosi, F. Frith, J. R. Whyte, J. C. "Rapp. N. B.—A regular meeting will be held at 168 "the above place, on Monday evening, October 18th, "at 8 o'clock percisely."

That said circular was sent to a number of wood dealers who had not before attended said meetings, or joined said combination. That he has received copies of said circulars from several wood dealers,

holding license from him, and believes the said cir-
169 cular has had the effect to add a considerable number of opponents to his rights under his patent who would not otherwise have joined said combination.

JACOB A. CONOVER.

Sworn to before me, this 17th day of November, 1875.

R. A. STILLWELL,
U. S. Commissioner.

170

UNITED STATES OF AMERICA. } ss.
Southern District of New York. }

JOHN A. COLTON of the City of New York, being duly sworn, says, he is sixty five years of age, that he has been a machinist for upwards of 40 years last past, and is at present carrying on that business at 625 and 627 East 15th street, in said city. That he knows Darwin A. Greene, the defendant, and was in business with him for about 15 months previous and up to the
171 23d day of July last. That said Green, when he left deponent, was indebted to him in the sum of from $3,000 to $4,000 for which deponent now holds a chattel mortgage on his tools, to secure $2,500 thereof, which tools are not worth more than, in the present state of the trade and market, the amount of said mortgage. And deponent further says, that he knows that said Greene is also indebted to Edward L. Trowbridge and William B. Baldwin in from $12,000 to $14,000, for which they offered to take fifty cents on the dollar
172 out of the said Greene's portion of the profits of the business with deponent, from time to time, as they might accrue, but that said business with deponent was not prosperous; and deponent terminated the same on the 23d day of July aforesaid, and took the mortgage aforesaid as part security for said Greene's indebtedness to him. And deponent further says that

from the facts aforesaid, and other knowledge and information, he believes the said Greene to be hopelessly insolvent and wholly unable to pay his just debts. 173

And deponent further says, that since the dissolution with deponent as aforesaid, he is informed and believes the said Greene has procured some situation with H. S. Manning & Co., No 111 Liberty street, in this City, and has issued circulars and cards in his own name, a printed copy of which is annexed to the foregoing affidavit of Thomas Van Antwerp, offering to build and supply kindling-wood machines to the trade. 174

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

PETER VAN ANTWERP, being duly sworn, says, he is the solicitor and counsel for the complainant in this action, and has been the solicitor and counsel for him from the time of the commencement of the first action under the letters patent in question, and has personally conducted all the actions and proceedings referred to in the foregoing affidavit of the complainant, and knows that all the statements in said affidavit in relation to said actions and proceedings are substantially true. 175

And deponent further says that he has commenced thirty actions under said letters patent for said complainant, and all, with about five exceptions, against parties using what is known in the kindling wood business as the Greene machine, all made sold or put upon the market by or through the instrumentality of the defendant, Darwin A. Greene, as he has been informed and believes. 176

And deponent further says, he had frequent conversations with many of the persons so prosecuted, and does not recollect a single one who did not claim and state that he had been persuaded by said

Greene to buy such machine, under the assurance
177 that he owned a patent for the same, and would fully protect him against any claim made by the complainant herein.

And deponent further says, that in all the litigations and proceedings, except those against Roach and Rapp, said Greene appeared to be the principal manager or active assistant in the defences.

And deponent further says, that between the time of the commencement of the action against Dohrmann and Peipho, which was on the — day of August,
178 1864, and the commencement of this action, he has made frequent inquiries respecting the pecuniary condition of said Greene, with a view of commencing actions against him, but always failed to ascertain who the real party manufacturing said machine was, or that said Greene would be able to respond in any damages, costs, or expenses which might be recovered against him, that he conferred a number of times with the complainant on the subject, who said he could not afford to prosecute said Greene, at the risk
179 of laying out the necessary moneys, without a reasonable prospect of getting it back, so long as the parties using the machines were responsible and able to pay.

And deponent further says, that he applied to the clerk of this court for a subpœna to bring J. A. Colton before one of the United States Commissioners to make the affidavit referred to in the affidavit of the complainant, but said clerk declined, stating that he had no authority to do so.

180

PETER VAN ANTWERP.

Sworn to before me, this 20th }
day day of November, 1875. }

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

THOMAS VAN ANTWERP, being duly sworn, says, he resides in Jersey City, in the State of New Jersey, and is thirty-four years of age. That for fifteen years last past he has been in the habit of making himself familiar with machinery of various kinds making drawings for patents and, assisting in preparing applications for patents; that he has also been engaged in the kindling-wood business, using the machine described in the re-issued Letters Patent referred to in the bill of complaint in this action, and is perfectly familiar with its construction and mode of operation, and has been for upwards of ten years last past.

That he has been familiar during all that time with a variety of other wood splitting machines of similar construction operating substantially in the same manner, and among others one generally known as the Greene machine, manufactured by one Darwin A. Greene, of the City of New York. That he is perfectly familiar with the construction of the said so called Greene machine and its mode of operation.

And deponent further says, he has frequently seen said machine last referred to in operation, splitting blocks of wood into kindling wood; that he has also seen a correct model of it in this court, and especially recollects its being used in evidence in the case of Jacob A. Conover, the complainant in this action, against Joseph Kohn and Samuel Kemmelstiel, in which deponent was a witness for complainant, and in which action there was a final decree entered against the defendants on the 3d day of March, 1875, for the use thereof; that he saw and examined the said machine so used by said Kohn and Kemmelstiel, and that said model correctly represents the same.

And deponent further says that, at the request of
185 the complainant, he has examined a number of said Greene machines, that they are constructed entirely of iron, that upon a number of them he has noticed particularly there was cast on a part of the frame work the following words, letters and figures, viz.: "D. A. Greene, Pd. July 12, 1859, New York."

And deponent further says, that he has read a copy of the Letters Patent granted to said D. A. Greene by the United States, bearing date the day and year last aforesaid, and that the only thing granted to said
186 Greene thereby related to the knives alone and to no other part or portion of said machine.

And he further says, he has read a certified copy of the record of the proceedings in the matter of the application for said Letters Patent; that there were two other claims besides the one for said knives in said application, both of which were disallowed, and as to the reason for the rejection of one of them said Greene was referred by the Patent Office, among other things, to the Letters Patent of the complain-
187 ant mentioned and referred to in this action.

And deponent further says that on or about the 28th day of September last, he was duly deputed by the United States Marshal for the Southern District of New York to serve a number of parties, against whom actions were commenced under said Letters Patent of the complainant, with subpœnas to appear and answer in this Court.

That among the parties so to be served were several residing in the State of New Jersey. That he
188 obtained information that the said parties were likely to attend an adjourned meeting of wood dealers at the Germania Assembly Rooms in the Bowery, in the City of New York, on the evening of said day. That he accordingly went to said place on said evening and served two of the parties. That he was in the bar-room some time before the hour of said meeting,

and saw there a considerable number of the wood dealers known to him. 189

And deponent further says, that he has been acquainted with Darwin A. Greene, and has known him for at least four or five years last past. That said Greene was there attending said meeting; that upon serving the processes on the parties as aforesaid they immediately took them to said Greene, and all the parties present gathered around in consultation, he being to all appearance, the centre and principal manager of the assemblage.

And deponent further says, that learning said 190
Greene had recently located himself at the place of business of H. S. Manning & Co., 111 Liberty street, in the City of New York, from whence he was sending out circulars among the wood manufacturers, he went to said place of business on the 27th day of October last, and not finding said Greene in at the time, received from a person in charge of the office the annexed circular.

And deponent further says, that shortly after the decision of this court in said action against Dohr- 191
mann & Peipho, he saw machines for splitting wood which he was informed and believes were constructed by said Greene. That they were the same as the one referred to in the opinion of Judge Shipman in said action, except that the endless chain carriage which carried and advanced the blocks forward to the splitting knives, and the split wood away, was shortened so that it extended forward only up to the knives, and left the blocks upon said shortened travelling carriage to force the blocks in front to the 192
knives, and the splitting wood beyond them.

And deponent further says, that subsequent to that time he also saw and examined other machines for splitting wood which he is informed and believes were also constructed by said Greene, in which there were the same endless chain carriage to carry and advance the blocks to the knives or cutters, but that the

cutters or knives were changed in form. In-
193 stead of the slabbing knife and series of other knives as in the said Dohrmann & Peipho machine, and the other machines hereinbefore referred to, there were V shaped knives or splitters. That they moved vertically instead of horizontally, and that the blocks were placed on the endless carriage on their ends instead of their sides, as in the said Dohrmann, and Peipho and other machines before referred to.

And deponent further says, he has examined the cuts or illustrations in the circular hereto attached,
194 and before referred to, and recognizes the first cut or illustration as a fair description of the machine last referred to. That as he understands the same, said machine contains a bed on which the blocks are split, splitting knives operated by a positive crank movement to split them suitably for kindling-wood, a clearer plate which will strip off any wood which may adhere to the knives, on their upward movement and an endless chain carriage moving intermittently, by which the blocks are substantially carried and ad-
195 vanced to the action of the knives, and the split wood discharged at the end of the machine. And deponent further says, that he has examined the other cut or illustration in said circular, on the second page, and designated as a "single knife splitter," and understands its construction and mode of operation. That said machine has a bed on which the blocks to be split are held in a vertical direction, a cutting or splitting knife, reciprocated by a positive crank movement, in a line with the grain of the
196 wood to be split, and a clearing plate to strip from the knife, in its upward movement, any pieces of wood which may adhere to it.

THOMAS VAN ANTWERP.

Sworn to before me this 20th day of November, 1875.

GEORGE F. BETTS.

U. S. Commissioner.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

197

JOHN H. DOHRMANN, of the City of New York, being duly sworn, says, he is 50 years of age and upwards, and one of the firm of Dohrmann and Peipho, kindling-wood dealers in said city. That he has been engaged in said business for upwards of 15 years last past at 558 West 24th street, in said city. That soon after deponent and his copartner commenced said business, the defendant Darwin A. Greene represented to them that he had a machine for splitting wood, for 198
which he had obtained letters patent of the United States, and induced deponent and his copartner to purchase one, verbally agreeing to save them harmless from any claim of the complainant, Jacob A. Conover, under his patent of May 15th, 1855, for splitter. That upon the representations of said Greene that his said machine was patented, and his promise to save them harmless and guarantee them against said Conover, they purchased one machine from said Greene, and used the same. That the machine was 199
constructed wholly of iron, and had cast upon one of the plates of the frame, according to deponent's present recollection the words and figures following, viz: "D. A. Greene, Pd. July 12, 1859, New York." That there was no mark, stamp, or any other designation upon any part of the splitting knives or their connections showing that the same was patented, and that deponent did not know that said patent of said Greene related only to said knives until it was so shown in a suit by said Conover against deponent and said 200
Peipho, in which a judgment was rendered in this Court against them for the use of said machine and for which they were obliged to pay a large amount of damages. And deponent further says that after the recovery against them in said action, deponent and said Peipho took a license from said

complainant, and although they were permitted there-
201 by to continue to use the same machine, they discontinued the use thereof, and procured one of the regular Conover splitter, having discovered that it was greatly superior to the Greene machine, in that it would do the work better was less liable to break or get out of order, and produce better results.

And deponent further says that when the action aforesaid was commenced against him and said Peipho, he went to said Greene about it; that thereupon a meeting of wood dealers was called, and said Greene
202 gave him notice of said meeting. That at said meeting and other subsequent meetings, money was raised for defense, and that upwards of one thousand dollars was raised and passed into the hands of said Greene for the purpose of paying the legal expenses; and deponent further says that subsequently E. W. Stoughton, Esq., was employed as counsel in said suit, and deponent and said Peipho were compelled to pay in addition to their contribution to the said money which was so passed to said Greene, upwards of $500,
203 and were afterwards sued for $500.00 in addition.

That they were advised by their counsel that they could recover all their cost and expenses and damages from said Greene, but that on inquring they believed that said Greene was unable to respond, and they concluded to submit to their loss.

JOHN H. DOHRMANN.

Sworn to before me, this 3d }
day of November, 1875. }

204 R. E. STILLWELL,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss.: 205

THERON KELSEY, of the City of Brooklyn, County of Kings, and State of New York, being duly sworn, says, that he is 48 years of age, that he is engaged in the kindling-wood business, and has been since the month of July, 1863, in the City of Brooklyn, aforesaid. That when he was about starting the business together with his copartners, comprising the firm of Kelseys & Loughlan, desiring to obtain proper machinery for the purpose of conducting the busi- 206
ness, he met Darwin A. Greene, the defendant, who represented to him that he had patented machinery for splitting wood, which, to the best of his recollection, was claimed by Greene as being made under a patent granted to said Greene by the United States, as the administrator of some one, and that said Greene agreed to protect deponent's said firm in the use of said machine against all claimants, and especially against the complainant.

That he sold and delivered deponent's firm said 207
machine, that it was constructed wholly of iron, and upon one of the plates constituting a portion of the frame were cast the following words and figures, viz.: "D. A. Greene, Pd. July 12th, 1859, New York." And deponent further says, that some time after, and in or about, the year 1869, he learned that the complainant had recovered a judgment against Dohrmann & Peipho of the City of New York, for the use of a similar machine, and learning that said defendant in this action was insolvent, they went to 208
the complainant and made arrangements with him, and obtained from him a right to use said machine. That they immediately abandoned the use of said machine, and obtained from the complainant one of his regular wood-splitting machines, having discovered that it was greatly superior to the Greene machine, in that it would do the work better, was less

liable to get out of order or break, and produce bet-
209 ter results.

THERON KELSEY.

Sworn to before me, this 16th day November, 1875.

KENNETH G. WHITE,
U. S. Commissioner, &c.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss.:

210 MARTIN DAVIES, of Hoboken, in the State of New Jersey, being duly sworn, says he has been engaged in mechanical pursuits for upwards of 20 years; that for the past four years and upwards he has been engaged in the business of manufacturing kindling wood at Hoboken aforesaid, using for that purpose during the first year, a machine made by the above named defendant Darwin A. Greene; that said machine had cast upon one of the plates constituting a part of its frame the following words and figures, viz: "D.
211 A. Greene, Pd. July 12th, 1859, New York." That from said inscription, and from information at the time of purchasing, he fully believed said machine was patented by said Greene at the time designated on said plate, and that said Greene had a lawful authority to build such machines.

And deponent further says, that about the end of said year he disposed of said machine and procured what is known as the Conover splitter, a machine constructed under the letters patent of the complainant,
212 Jacob A. Conover, dated May 15th, 1855, which has been used by him ever since, and he has found it far superior to the Greene machine, in that it is much less liable to break or get out of order, and costs less for repairs; that running at the same rate of speed it will split more wood in the same length of time, and split it much better. That said machine has been, during all said period, and still is located on what is known

as the meadows at Hoboken aforesaid, a very soft soil where the muck is at least 20 feet in depth, and that 213
the only foundation on which said splitter or machine rests, and has rested during all the time, is a plank platform about 6 feet square, supported only by said soft soil,and deponent positively knows from actual observation and experience during all said time, not only that no solid foundation of stone, brick, or other hard material is neeessary for the support of said machines but that an elastic support is preferable.

And deponent further says, that sometime about the middle of September last he reeeived a notiee request- 214
ing him to attend a meeting of kindling-wood dealers at Germania Assembly Rooms, in the Bowery, in the City of New York ; that he attended there at the appointed time ; that there were a considerabla number of wood dealers present ; that the above named defendant, Darwin A. Greene, was also present and took an active part in the meeting ; that the object of said meeting was stated to be to organize an association to act together and raise money to resist the claims of said Conover under his patent, and a 215
request was made that all who were unwilling to join in such resistanee should retire; that said meeting was adjourned for one week ; that on the evening to which such meeting was adjourned he went again to said place, but not into the room where the meeting was to be held; that he there saw in the bar-room, in said Germania Assembly Rooms building, the parties who attended previously, and others, and especially said Greene, who appeared to be the centre of the consultation and conversation of the persons in 216
attendance.

MARTIN DAVIES.

Sworn to before me, this }
3d day of Nov., 1875. }

JOHN A. SHIELDS,
U. S. Commissioner, Southern Dist. of N. Y.

UNITED STATES OF AMERICA } ss..
217 *Southern District of New York.* }

WILLIAM MADOULE being duly sworn, says he resides in the City of New York, and is twenty-eight years of age. That he is an engineer, and has run engines and had charge of machinery for ten years last past, and during the larger part of that time, and for at least eight years, of machinery for manufacturing kindling-wood, in said city; that for about four years of that time he run a machine for splitting the wood
218 known in the trade as the Greene machine, made by Darwin A. Greene, the above named defendant, which he alleged was so made under a patent owned by him, and on which machine was a plate or stamp designating that it was patented.

And deponent further says, that Nathan B. Cottrell, in whose employ he then was and still is, after about four years use of said machine, disposed of it, and put up what is known as the Conover machine, manufactured under his patent of May 5th, 1875, which has been run by deponent for said Cottrell ever since.
219 That deponent further says he has had the principal charge of said machines, and of attending to and assisting in their repairs. That the Greene machine was much more liable to get out of order than the Conover, and required more repairs and occasioned much greater loss of time. That the Conover machine, running at the same rate of speed, would split more wood than the Greene, turn and performed the work a great deal better.

his
220 WILLIAM ✕ MADOULE.
mark

Sworn to before me this 28th }
day of October, 1874. }

GEO. F. BETTS,
U. S. Commissioner, Southern Dist. of N. Y.

UNITED STATES OF AMERICA, } ss.: 221
Southern District of New York, }

JAMES W. CLARKE, being duly sworn, says he is 39 years of age; resides in the City of New York and is engaged in the kindling-wood business in said city. That some time in the month of October last he received a printed notice or request to attend a wood dealers' meeting at Germania Assembly Rooms, in said city but did not attend. That shortly after, and on or about the first day of November last, there was received at his place of business through the post office the foregoing annexed paper in an envelope and directed to him. That he immediately wrote to Peter Van Antwerp whose name appeared thereon as solicitor requesting information as to the meaning thereof. That said Van Antwerp called upon deponent personally and was shown such paper, and at once assured deponent that it had not been issued or sent by him or Mr. Conover, and that no proceedings of any kind had been institnted or taken against him by Mr. Conover. 222 223

And deponent further says, that a few days after said interview with said Van Antwerp, said defendant Greene and one Wilms, a wood dealer, called upon deponent and requested him to join a combination of wood dealers organized to defend all its members against said Conover's claims under his patent. That they informed deponent said Conover had commenced an action against him and a large number of others, and said addressing deponent: "You have "been served with papers through Conover and if "you will join our association and pay fifty dollars, "we will take care of your case, as we have employ- "ed a lawyer to defend the members of the association." Deponent replied that he did not know he had been served with any papers by Conover, and they assured him he had, as they had seen his name 224

down on a list of persons against whom Conover had
225 commenced actions.

JAMES W. CLARKE.

Sworn to before me this 28th }
day of Jan'y, 1876. }

JOHN A. SHIELS,
U. S. Commissioner,
S. D. of N. Y.

226

The residents of the United States of America to

{ L. S. } *James W. Clark,*

GREETING:

You are hereby commanded, that you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit Court, in Equity, on the first Monday of December, A. D. 1875, wherever
227 the said Court shall than be, to answer a bill of complaint exhibited against you in the said Court by Jacob A. Conover, and to do further and receive what the said Court shall have considered in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness, Hon. Waite R. Morrison, Chief Justice of the Supreme Court of the United States, at the City of New York, on the 5th day of——in the year one thousand eight hundred and seventy five, and of the
228 independence of the United States of America, the one hundredth.

PETER VAN ANTWERP.
335 *Broadway*
Complainant's Solicitor.

WHITE G. KENNETH.
Clerk.

The defendant is required to enter appearance in the above cause in the Clerk's office of this Court, 229
on or before the first Monday of December 1875, or the bill will be taken *pro confesso* against him.

C. G. K.
Clerk.

UNITED STATES of AMERICA } ss.:
Southern District of New York. }

PETER VAN ANTWERP, Solicitor for complainant in this action, being duly sworn, says he has read the 230
foregoing affidavit of James W. Clarke, and examined the paper thereto annexed purporting to be a subpœna to appear and answer, issued out of this court. That no such paper ever was signed or issued by deponent, or at his instance, or by his knowledge, nor was ever any bill of complaint or subpœna issued in any such action at the suit of Jacob A. Conover.

And deponent further says that he has had his attention called to, and has seen several other papers of precisely the same character, which he was in- 231
formed by the parties named therein had been received by them through the post office, neither of which had been issued by him or through his instrumentality or by his knowledge although all had his name attached as solicitor for the complainant.

And deponent further says that he has had personal interviews with four different parties who had received such papers.

And was informed by each of them that shortly before receiving the same he had been called upon 232
by one or more persons representing themselves to be members or committeemen of an association combined to defeat the claims of the complainant under his letters patent for a wood splitting machine (among the names so mentioned were Darwin A. Greene, John H. Rapp, F. Frith, and F. Myers), and

each had declined or neglected to join such com-
233 bination or contribute to its funds, and deponent verily believes that such pretended process was sent to said parties through the instrumentality of such combination, for the purpose of inducing them to join such combination and contribute to its funds.

PETER VAN ANTWERP.

Sworn to before me, this 2d day of Febuary, 1876.

JOHN A. OSBORNE,
234 *U. S. Commissioner.*

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